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September 18, 2015

IDAHO PUBLIC  
UTILITIES COMMISSION

***VIA OVERNIGHT DELIVERY***

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington  
Boise, ID 83702

**Re: CASE NO. PAC-E-15-11  
IN THE MATTER OF THE APPLICATION OF PACIFICORP d/b/a ROCKY  
MOUNTAIN POWER FOR APPROVAL OF A POWER PURCHASE AGREEMENT  
BETWEEN PACIFICORP AND CONSOLIDATED IRRIGATION COMPANY**

Dear Ms. Jewell:

Please find enclosed for filing an original and seven (7) copies of Rocky Mountain Power's Application in the above-referenced matter.

Informal inquiries may be directed to Ted Weston, Idaho Regulatory Manager at (801) 220-2963.

Very truly yours,

Yvonne R. Hogle  
Asst. General Counsel

Enclosures

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1407 West North Temple, Suite 320  
Salt Lake City UT 84116  
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IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE  
APPLICATION OF PACIFICORP d/b/a  
ROCKY MOUNTAIN POWER FOR  
APPROVAL OF A POWER PURCHASE  
AGREEMENT BETWEEN PACIFICORP  
AND CONSOLIDATED IRRIGATION  
COMPANY**

**Case No. PAC-E-15-11**

**APPLICATION OF ROCKY  
MOUNTAIN POWER**

COMES NOW, PacifiCorp, d/b/a Rocky Mountain Power ("Rocky Mountain Power" or the "Company"), in accordance with RP 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), and hereby respectfully petitions the Idaho Public Utilities Commission (the "Commission") for an order approving a power purchase agreement between PacifiCorp and Consolidated Irrigation Company ("CIC"), dated September 11, 2015, under which CIC, a Qualifying Facility ("QF"), will sell and the Company will purchase electricity generated by the CIC project located in Preston, Franklin County, Idaho. In support of this Application, Rocky Mountain Power states as follows:

**I. INTRODUCTION**

1. Rocky Mountain Power is a division of PacifiCorp. PacifiCorp is an Oregon corporation that provides electric service to retail customers through its Rocky



Mountain Power division in the states of Idaho, Utah, and Wyoming, and through its Pacific Power division in the states of Oregon, California, and Washington. Rocky Mountain Power is a public utility in the state of Idaho and is subject to the Commission's jurisdiction with regard to its public utility operations.

2. CIC is an Idaho non-profit corporation. CIC (the "Seller") and Rocky Mountain Power, acting in its merchant function capacity ("the Purchaser"), entered into the Agreement (as defined below) on September 11, 2015.

## **II. BACKGROUND**

3. The Seller intends to own, operate and maintain the CIC project including the Glendale hydroelectric facility and its interconnection facilities to (a) generate electricity located within Rocky Mountain Power's service territory in Preston, Franklin County, Idaho under the applicable provisions of PURPA and (b) sell the net output to Rocky Mountain Power. The expected capacity rating of the CIC project is 481-kilowatts (kW).

## **III. THE POWER PURCHASE AGREEMENT**

4. On September 11, 2015 the Seller entered into a 90-110 percent Idaho Banded Power Purchase Agreement ("Agreement") with the Company, attached to this Application as Exhibit A. Under the terms of the Agreement, the Seller elected to contract with the Company for a term of approximately 20 years. The Company agreed to pay CIC non-levelized, Conforming Energy or Non-Conforming Energy Purchase Prices (as defined in the Agreement), per Commission Order No. 33305 for capacity and energy adjusted for seasonality and On-Peak/Off-Peak Hours (as defined in the

Agreement) in accordance with Commission Order No. 30480 and Errata to Order No. 30480.

5. The total nameplate capacity of the CIC project is 481 kilowatts. As described in Section 4 of the Agreement, CIC is required to provide data about the CIC project that the Company will use to determine whether, under normal and/or average conditions, the feasibility that Facility Net Energy (as defined in the Agreement) will equal or exceed 2,516,348 kWh in each full calendar year for the full term of the Agreement, due to drought conditions in Idaho. CIC estimates that it will provide 2,482,885 kWh in its first year of operation.

6. Paragraph 2.1 of the Agreement provides that the Agreement will not become effective until it is fully executed and approved by the Commission. Under the Agreement, Commission approval includes the determination that the prices to be paid for energy and capacity are just and reasonable and in the public interest, and that all of the cost incurred by the Company for purchasing capacity and energy from CIC are legitimate expenses, for which the Commission will allow full recovery in Idaho rates in the event other jurisdictions deny recovery of their proportionate share of said expenses.

7. The Commercial Operation Date for the CIC project is defined in Section 2.3 of the Agreement. The Company anticipates that CIC will achieve Commercial Operation prior to the Effective Date (as defined in the Agreement). Various requirements have been placed upon CIC in order for the Company to accept and pay for energy deliveries from the CIC project prior to the Effective Date. For the period prior to Commission approval but after Commercial Operation, the Company will compensate CIC at 85 percent of the average monthly market index price. The Company will monitor



compliance with the foregoing initial requirements as described in Section 5.4 of the Agreement. In addition, the Company will monitor the ongoing requirements through the full term of the Agreement.

8. The Agreement contains non-levelized published avoided cost rates in conformity with Commission Order No. 33305. All applicable interconnection charges and monthly operation and maintenance charges under the Generation Interconnection Agreement with PacifiCorp transmission will be assessed to CIC.

9. In Section 4.3 of the Agreement, the Company has modified the language of the Subsequent Energy Delivery Schedule (as defined in the Agreement). The language is similar to the language the Commission approved in Order No. 33262.

10. In Section 14 of the Agreement, the Company has modified the language of Force Majeure to include icing conditions. The language is similar to the language the Commission approved in Order No. 33262.

#### **IV. COMMUNICATION AND SERVICE OF PLEADINGS**

11. Service of pleadings, exhibits, orders and other documents relating to this proceeding should be served on the following:

Bruce Griswold  
Director, Short-Term Origination  
PacifiCorp  
825 N.E. Multnomah, Suite 1800  
Portland, OR 97232  
[bruce.griswold@pacificorp.com](mailto:bruce.griswold@pacificorp.com)

Yvonne Hogle  
Assistant General Counsel  
Rocky Mountain Power  
1407 West North Temple, Suite 320  
Salt Lake City, UT 84116  
[yvonne.hogle@pacificorp.com](mailto:yvonne.hogle@pacificorp.com)

Ted Weston  
Idaho Regulatory Affairs Manager  
Rocky Mountain Power  
1407 West North Temple Suite 330  
Salt Lake City, UT 84116  
[ted.weston@pacificorp.com](mailto:ted.weston@pacificorp.com)

**V. MODIFIED PROCEDURE**

12. Rocky Mountain Power believes that a hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure: i.e., by written submissions rather than by hearing. RP 201 *et seq.* If, however, the Commission determines that a technical hearing is required, the Company stands ready to prepare and present testimony in such hearing.

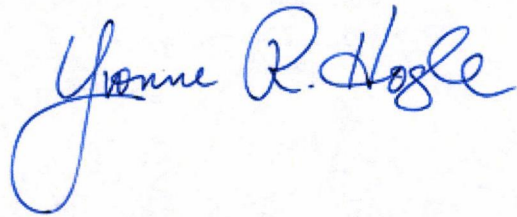
**VI. REQUEST FOR RELIEF**

NOW, THEREFORE, based on the foregoing, Rocky Mountain Power respectfully requests that the Commission issue an Order: (1) authorizing that this matter may be processed by Modified Procedure; (2) approving the Agreement without change or condition; and (3) declaring the prices to be paid for energy and capacity as just and reasonable and in the public interest, and that all of the cost incurred by the Company for purchasing capacity and energy from CIC be allowed in Idaho rates as prudently incurred expenses in the event other jurisdictions deny recovery of their proportionate share of said expenses.



DATED this 18<sup>th</sup> day of September, 2015.

Respectfully submitted,



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Yvonne R. Hogle  
Attorney for PacifiCorp

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**CONSOLIDATED IRRIGATION COMPANY**

[a new, on-system, non-fueled, non-levelized, 90%/110% performance band, Idaho  
Qualifying Facility—10aMW/Month or less]

**AND**

**PACIFICORP**

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## **POWER PURCHASE AGREEMENT**

THIS POWER PURCHASE AGREEMENT is entered into between Consolidated Irrigation Company, an Idaho non-profit corporation (the "**Seller**") and PacifiCorp, an Oregon corporation, acting in its merchant function capacity ("**PacifiCorp**"). Seller and PacifiCorp are referred to collectively as the "**Parties**" and individually as a "**Party**".

### **RECITALS**

A. Seller intends to construct, own, operate and maintain a hydroelectric facility, including Seller's Interconnection Facilities, for the generation of electric power located within PacifiCorp service territory in Preston, in Franklin County, Idaho with an expected Facility Capacity Rating of 481 kilowatts (kW), as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. Seller intends to operate the Facility as a Qualifying Facility; as such term is defined in this Agreement, and to sell Net Output to PacifiCorp in Idaho.

C. Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is 2,516,348 kilowatt-hours (kWh) pursuant to the monthly Initial Year Delivery Schedule in Section 4.3 and in the delivery schedules in **Exhibit F-1** and **Exhibit F-2** hereto, which amount of energy PacifiCorp will include in its resource planning.

D. Seller intends to sell and PacifiCorp intends to purchase all the Net Output from the Facility in accordance with the terms and conditions of this Agreement.

E. PacifiCorp intends to designate Seller's Facility as a Network Resource for the purposes of serving Network Load.

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation 2010 Protocol.

G. Seller has provided PacifiCorp with: (a) a motive force plan and associated certification from a Licensed Professional Engineer as described in Section 7 of this Agreement; and (b) an executed copy of **Exhibit I**, "Seller Authorization to Release Generation Data to PacifiCorp."

NOW, THEREFORE, the Parties mutually agree as follows:

### **SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1 "**Adjusted Scheduled Monthly Energy Delivery**" shall have the meaning set forth in Section 4.4.

1.2 "**As-built Supplement**" shall be a supplement to **Exhibit A**, provided by Seller following completion of construction of the Facility, accurately describing the completed Facility.

### **GENERAL CONDITIONS**

1.3 **"Billing Period"** means the time period between PacifiCorp's reading of its power purchase meter at the Facility and reasonable efforts will be made to cause the Billing Period to coincide with calendar months.

1.4 **"CAMD"** means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

1.5 **"Capacity Factor"** means, for any given period of time, the Net Output (kWh) delivered divided by the product of the Facility Capacity Rating (kW) and the total hours in the given period of time.

1.6 **"Commercial Operation"** means that not less than 90% of the expected Facility Capacity Rating is fully operational and reliable and the Facility is fully interconnected and synchronized with the System, all of which shall be Seller's responsibility to receive or obtain, and which occurs when all of the following events: (i) have occurred, and (ii) remain simultaneously true and accurate as of the time on which Seller gives PacifiCorp notice that Commercial Operation has occurred:

1.6.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer (a) stating the Facility Capacity Rating of the Facility at the anticipated time of Commercial Operation and (b) stating that the Facility is able to generate electric power reliably in amounts required by this Agreement.

1.6.2 PacifiCorp has received documentation that start-up testing of the Facility has been completed in accordance with **Exhibit E**.

1.6.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, an attorney in good standing in Idaho, or written correspondence from the Transmission Provider, stating that, in accordance with the Generator Interconnection Agreement, all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with the System in conformance with the Generator Interconnection Agreement and able to deliver energy consistent with the terms of this Agreement, and the Facility is synchronized with the System.

1.6.4 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer, or an opinion from an attorney in good standing in Idaho, stating that Seller has obtained all Required Facility Documents and, if requested by PacifiCorp in writing, that Seller has provided copies of any or all such requested Required Facility Documents.

1.6.5 Seller has complied with the security requirements of Section 10.

1.6.6 Network Resource Designation and Transmission Service Request.

#### GENERAL CONDITIONS



- (a) Seller has provided all data required by the Transmission Provider to enable the Facility to be designated as a network resource in accordance with the Tariff.
- (b) PacifiCorp has received confirmation from the Transmission Provider that the Facility has been designated as a network resource.
- (c) Seller has provided all data required for PacifiCorp to submit a transmission service request for the Facility pursuant to the Tariff.
- (d) PacifiCorp has received confirmation from the Transmission Provider that the transmission service request has been granted in sufficient capacity to meet or exceed the Maximum Facility Delivery Rate.

1.7 **"Commercial Operation Date"** means the date, as designated by PacifiCorp pursuant to Section 2.3, that the Facility first achieves Commercial Operation.

1.8 **"Commission"** means the Idaho Public Utilities Commission.

1.9 **"Conforming Energy"** means all Net Energy except Non-Conforming Energy subject to any adjustments to the Energy Delivery Schedule in Section 4.4.

1.10 **"Conforming Energy Purchase Price"** means the applicable price for Conforming Energy and capacity (if any), specified in Section 5.1.

1.11 **"Contract Year"** means a twelve (12) month period commencing at 00:00 hours Mountain Prevailing Time ("MPT") on January 1 and ending on 24:00 hours MPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Expiration Date, unless earlier terminated as provided herein.

1.12 **"Delay Liquidated Damages", "Delay Daily Minimum", "Delay Period", "Delay Price" and "Delay Volume"** are defined in Section 2.4 of this Agreement. **"Delay Security"** is defined in Section 10.1.1 of this Agreement.

1.13 **"Effective Date"** is defined in Section 2.1 of this Agreement.

1.14 **"Energy Delivery Schedule"** is defined in Section 4.3 of this Agreement.

1.15 **"Environmental Attributes"** means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat

#### GENERAL CONDITIONS

of altering the Earth's climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) PTCs, ITCs, the Cash Grant, any Tax Credits, or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

1.16 **"Environmental Contamination"** means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

1.17 **"Expiration Date"** is defined in Section 2.1 of this Agreement.

1.18 **"Facility"** is defined in Recital A of this Agreement.

1.19 **"Facility Capacity Rating"** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.20 **"Force Majeure"** has the meaning set forth in Section 14.1.

1.21 **"Forced Outage"** means an outage that requires removal of one or more generating units from service, another outage state or a reserve shutdown state before the end of the next weekend. Maintenance Outages and Planned Outages are not Forced Outages.

1.22 **"Generator Interconnection Agreement"** or **"GIA"** means the generator interconnection agreement entered into separately between Seller and the Transmission Provider, providing for the construction, operation, and maintenance of the Interconnection Facilities required to accommodate deliveries of Seller's Net Output.

1.23 **"Governmental Authority"** means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

1.24 **"Green Tags"** means (a) the Environmental Attributes associated with all Output, together with (b) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified," or otherwise. One Green Tag represents the Environmental Attributes made available by the generation of one MWh of energy from the Facility.

1.25 **"Hazardous Materials"** means any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

#### GENERAL CONDITIONS

1.26 **"Inadvertent Energy"** means: (1) energy delivered in excess of the Maximum Monthly Purchase Obligation; and (2) energy delivered to the Point of Delivery at a rate exceeding the Maximum Facility Delivery Rate. Inadvertent Energy is not included in Net Output.

1.27 **"Index Price"**, for each day, shall mean the weighted average of the average Peak and Off-Peak firm energy market prices, as published in the *Intercontinental Exchange (ICE) Day Ahead Power Price Report* for the Mid-Columbia Hub. For Sunday and NERC holidays, the 24-Hour Index Price shall be used, unless ICE shall publish a Firm On-Peak and Firm Off-Peak Price for such days for Mid-Columbia, in which event such indices shall be utilized for such days. If the ICE index or any replacement of that index ceases to be published during the term of this Agreement, PacifiCorp shall select as a replacement a substantially equivalent index that, after any appropriate or necessary adjustments, provides the most reasonable substitute for the index in question. PacifiCorp's selection shall be subject to Seller's consent, which Seller shall not unreasonably withhold, condition or delay.

1.28 **"Initial Year Energy Delivery Schedule"** shall have the meaning set forth in Section 4.3.

1.29 **"Interconnection Facilities"**, as defined in the Generator Interconnection Agreement, means all the facilities and ancillary equipment used to interconnect the Facility to the System.

1.30 **"Letter of Credit"** means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder. Such letter of credit shall be provided by an institution that is a United States office of a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, with a credit rating on its long-term senior unsecured debt of at least "A" from Standard & Poor's and "A2" from Moody's Investor Services, and having assets of at least \$10,000,000,000 (net of reserves).

1.31 **"Licensed Professional Engineer"** means a person who is licensed to practice engineering in the state of Idaho, who has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called to provide a certification, evaluation and/or opinion, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with the Seller, so long as such engineer has no other economic relationship, association or nexus with the Seller.

1.32 **"Maintenance Outage"** means any outage of one or more generating units that is not a Forced Outage or a Planned Outage. A Maintenance Outage is an outage that can be deferred until after the end of the next weekend, but that requires that the generating unit(s) be

#### GENERAL CONDITIONS

removed from service before the next Planned Outage. A Maintenance Outage may occur any time during the year and must have a flexible start date.

1.33 **"Material Adverse Change"** shall occur when Seller, in the reasonable opinion of PacifiCorp, has experienced a material adverse change in ability to fulfill its obligations under this Agreement. A downgrade of Seller's long-term credit rating (corporate or long-term senior unsecured debt rating) below 'Baa3' from Moody's Investors Services ("Moody's") or below 'BBB-' from Standard & Poor's Ratings Group ("S&P") or the cessation of S&P or Moody's rating of Seller shall constitute a Material Adverse Change.

1.34 **"Maximum Curtailed Facility Delivery Rate"** means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Delivery during a Qualifying Curtailment.

1.35 **"Maximum Facility Delivery Rate"** means the maximum instantaneous rate (kW) at which the Facility is capable of delivering Net Output at the Point of Delivery, as specified in Exhibit A. The Maximum Facility Delivery Rate may not exceed the Maximum GIA Delivery Rate.

1.36 **"Maximum GIA Delivery Rate"** means the maximum rate (kW) at which the Generator Interconnection Agreement allows the Facility to deliver energy to the Point of Delivery and is set forth in Exhibit A.

1.37 **"Maximum Monthly Purchase Obligation"** means the maximum amount of energy PacifiCorp is obligated to purchase under this Agreement in a calendar month. In accordance with Commission orders, the Maximum Monthly Purchase Obligation for a given month, in kWh, shall not exceed 10,000 kW multiplied by the total number of hours in that month and prorated for any partial month.

1.38 **"Nameplate Capacity Rating"** means the maximum instantaneous generating capacity of any qualifying small power or cogeneration generating unit supplying all or part of the energy sold by the Facility, expressed in MW or kW, when operated consistent with the manufacturer's recommended power factor and operating parameters, as set forth in a notice from Seller to PacifiCorp delivered before the Commercial Operation Date and, if applicable, updated in the As-built Supplement.

1.39 **"NERC"** means the North American Electric Reliability Corporation.

1.40 **"Net Energy"** means the energy component, in kWh, of Net Output. Net Energy does not include Inadvertent Energy.

1.41 **"Net Output"** means all energy and capacity (if any) produced by the Facility, less station use and less transformation and transmission losses and other adjustments, if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery, less any station use not provided by the Facility. Net Output does not include Inadvertent Energy.

1.42 **"Net Replacement Power Costs"** is defined in Section 11.4 of this Agreement.

#### GENERAL CONDITIONS



1.43 **"Network Resource"** shall have the meaning set forth in the Tariff.

1.44 **"Network Service Provider"** means PacifiCorp Transmission or a successor, including any regional transmission organization (RTO), as a provider of network service to PacifiCorp under the Tariff.

1.45 **"Non-Conforming Energy"** means for any Billing Period subject to any adjustments to the Energy Delivery Schedule in Section 4.4: (1) that portion, if any, of Net Energy delivered subsequently to the initial 110% of the Scheduled Monthly Energy Delivery for that Billing Period; or (2) all Net Energy delivered when Net Energy delivered is less than 90% of the Scheduled Monthly Energy Delivery for that Billing Period; and (3) all Net Output produced by the Facility prior to the Commercial Operation Date.

1.46 **"Non-Conforming Energy Purchase Price"** means the applicable price for Non-Conforming Energy and capacity, specified in Section 5.1.

1.47 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.

1.48 **"On-Peak Hours"** means hours from 7:00 a.m. to 11:00 p.m. Mountain Prevailing Time (MPT), Monday through Saturday, excluding Western Electricity Coordinating Council (WECC) and North American Electric Reliability Corporation (NERC) holidays.

1.49 **"Output"** means all energy produced by the Facility.

1.50 **"PacifiCorp"** is defined in the first paragraph of this Agreement, and excludes PacifiCorp Transmission or a successor, including any Regional Transmission Organization.

1.51 **"PacifiCorp Transmission"** means PacifiCorp, an Oregon corporation, acting in its transmission function capacity.

1.52 **"Planned Outage"** means an outage of predetermined duration that is scheduled in Seller's Energy Delivery Schedule. Boiler overhauls, turbine overhauls or inspections are typical planned outages. Maintenance Outages and Forced Outages are not Planned Outages.

1.53 **"Point of Delivery"** means the high side of the generation step-up transformer(s) located at the point of interconnection between the Facility and the System, as specified in the Generator Interconnection Agreement and in **Exhibit B**.

1.54 **"Premises"** means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

1.55 **"Prime Rate"** means the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by JPMorgan Chase & Co. If a JPMorgan Chase & Co. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

#### GENERAL CONDITIONS

1.56 **"Production Tax Credits"** means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the term hereof or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy actually generated and sold and any correlative state tax credit determined by reference to renewable electric energy actually generated and sold for which the Facility is eligible. Production Tax Credits do not include any tax credit determined by reference to investment.

1.57 **"Prudent Electrical Practices"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.58 **"Qualifying Curtailment"** means, to the extent not caused by Seller's negligent, reckless, or willful actions, a period in a given calendar month during which delivery of Net Output is curtailed or interrupted pursuant to Section 6.3, and only applicable to adjustment of the Energy Delivery Schedule as described in Section 4.4.

1.59 **"QF"** means **"Qualifying Facility"**, as that term is defined in the version of FERC Regulations (codified at 18 CFR Part 292) in effect on the date of this Agreement.

1.60 **"Replacement Period"**, **"Replacement Price"** and **"Replacement Volume"** shall have the meanings set forth in Section 11.4 of this Agreement.

1.61 **"Required Facility Documents"** means all deeds, titles, leases, licenses, permits, authorizations, and agreements demonstrating that Seller controls the necessary property rights, (e.g. site lease), rights to motive force, and government authorizations to construct, operate, and maintain the Facility, including without limitation those set forth in **Exhibit C**.

1.62 **"Requirements of Law"** means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

1.63 **"Scheduled Commercial Operation Date"** means the date by which Seller shall achieve Commercial Operation, as specified in Section 2.2.6.

1.64 **"Scheduled Monthly Energy Delivery"** means the Net Energy scheduled to be delivered during a given calendar month, as specified by Seller in the Energy Delivery Schedule.

1.65 **"Subsequent Energy Delivery Schedule"** is defined in Section 4.3.2 of this Agreement.

1.66 **"System"** means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall

#### GENERAL CONDITIONS

include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generator Interconnection Agreement.

1.67 **"Tariff"** means the PacifiCorp Transmission FERC Electric Tariff Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time, or the comparable tariff of a successor Transmission Provider.

1.68 **"Transmission Provider"** means PacifiCorp Transmission or a successor, including any Regional Transmission Organization.

1.69 **"WREGIS"** means the Western Renewable Energy Generation Information System

1.70 **"WREGIS Certificate"** means **"Certificate"** as defined by WREGIS in the WREGIS Operating Rules.

1.71 **"WREGIS Operating Rules"** means the operating rules and requirements adopted by WREGIS.

## **SECTION 2: TERM, MILESTONES, COMMERCIAL OPERATION DATE**

2.1 Except to the limited extent provided in Section 5.4, this Agreement shall become effective after the occurrence of all of the following events: (1) execution by both Parties; (2) approval by the Commission; *provided*, however, this Agreement shall not become effective until the Commission has determined, pursuant to a final and non-appealable order, that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp for purchases of capacity and energy from Seller are legitimate expenses, all of which the Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses.

Unless earlier terminated as provided herein, the Agreement shall remain in effect for a term of 20 years from the Effective Date (**"Expiration Date"**).

2.2 Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to achieve Commercial Operation by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 Blank

2.2.2 Blank

2.2.3 By the date five business days after the Effective Date, Seller shall provide Delay Security required under Section 10.1.1, as applicable. The obligation to provide Delay Security shall not apply to the extent that Commercial Operation has been achieved as of or prior to the Effective Date.

2.2.4 At least ten business days prior to delivery of any energy from the Facility to PacifiCorp, Seller shall provide PacifiCorp with an executed Generator

## **GENERAL CONDITIONS**

Interconnection Agreement, a QF FERC certification or self-certification, and a FERC hydroelectric license for the Facility. If Seller determines that a FERC certification or self-certification or a FERC hydroelectric license is not required for the Facility, the Seller shall provide to PacifiCorp (at Seller's sole cost) an opinion from an attorney identifying which document(s) identified in this section are not required for the Facility and explaining the legal basis for the document(s) not being required. The attorney providing the opinion shall be licensed and in good standing in the state of Idaho, shall be familiar with QF and FERC statutes and regulations and shall not have a financial interest, or other nexus or association with Seller or the Facility.

2.2.5 Prior to Commercial Operation, Seller shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp.

2.2.6 Seller intends to operate the Facility as a Qualifying Facility.

2.3 Establishing Commercial Operation. To achieve Commercial Operation, Seller must provide, subject to PacifiCorp's written approval which will not be unreasonably withheld, written notice to PacifiCorp stating when Seller believes that the Facility has achieved Commercial Operation accompanied by the information described in Section 1.6. PacifiCorp's approval, if given, shall designate the Commercial Operation Date. In no event will delay in achieving the Scheduled Commercial Operation Date postpone the Expiration Date specified in Section 2.1.

2.4 Delay Damages. Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be liable to pay PacifiCorp delay damages for the number of days ("Delay Period") the Commercial Operation Date occurs after the Scheduled Commercial Operation Date, until the earlier of occurrence of the Commercial Operation Date or the termination of this Agreement ("Delay Damages"). Billings and payments for Delay Damages shall be made in accordance with Section 10.1.

2.4.1 Delay Damages. Delay Damages equals the sum of the Delay Price times the Delay Volume,

Where:

"Delay Price" equals the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak monthly Conforming Energy Prices; and

"Delay Volume" equals the applicable Scheduled Monthly Energy Delivery divided by the number of days in that month.

### **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

### **GENERAL CONDITIONS**

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 Subject to Commission approval, the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 Subject to Commission approval, this Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a non-profit corporation duly organized and validly existing under the laws of Idaho.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller's members and managers have taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

#### GENERAL CONDITIONS



3.2.6 The Facility shall for the term of this Agreement be a QF. At any time PacifiCorp has reason to believe during the term of this Agreement that Seller's status as a QF is in question, PacifiCorp may require Seller, at Seller's cost, to provide PacifiCorp with a written legal opinion from an attorney in good standing in the state of Idaho and who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 All information about the Facility set forth in Exhibit A and Exhibit B has been verified by Seller and is true and accurate.

3.2.8 Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.

3.2.9 Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

3.2.10 Seller is not in default under the Generator Interconnection Agreement or any other agreement between the Parties related to this Agreement, the Generator Interconnection Agreement, or the Facility, and is current on all of its financial obligations under such agreements.

3.2.11 Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.

3.2.12 In entering into this Agreement and the undertaking by Seller of the obligations set forth herein, Seller has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of PacifiCorp in connection with the transactions contemplated by this Agreement.

3.2.13 All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

3.2.14 Seller's leases, licenses or other grants of rights in real property required for the operation of the Facility have terms through the Expiration Date of this Agreement and Seller is not in material breach of any terms of such leases or other rights in real property for the Facility or Premise.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made or at any time during the

#### GENERAL CONDITIONS

Term of this Agreement, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF ENERGY AND CAPACITY**

4.1 **Delivery and Acceptance of Net Output.** Unless otherwise provided herein, PacifiCorp will purchase and Seller will sell all Net Output from the Facility.

4.2 **No Sales to Third Parties.** During the term of this Agreement, Seller shall not sell any output from the Facility to any entity other than PacifiCorp.

4.3 **Energy Delivery Schedule.** Seller shall prepare and provide to PacifiCorp, on an ongoing basis, a written schedule of Net Energy expected to be delivered by the Facility ("**Energy Delivery Schedule**"), in accordance with the following:

From the Commercial Operation Date through the first twelve full calendar months following the Commercial Operation Date, Seller predicts that the Facility will produce and deliver the following monthly amounts ("**Initial Year Energy Delivery Schedule**"):

<b><u>Month</u></b>	<b><u>Energy Delivery (kWh)</u></b>
<b><u>September 2015 – August 2016</u></b>	
January	122,657
February	122,657
March	138,720
April	265,910
May	301,024
June	311,481
July	318,674
August	234,047
September	233,707
October	155,600
November	155,752
December	122,657

4.3.1 Seller may revise the Initial Year Energy Delivery Schedule any time prior to the Commercial Operation Date.

#### **GENERAL CONDITIONS**

4.3.2 After the Commercial Operation Date, Seller may revise any future monthly Subsequent Energy Delivery Schedule by providing written notice no later than 5 PM Pacific Standard Time on the last business day of the Notification Month specified in the following schedule:

Notification Month	Future Monthly Net Output Amounts Eligible To Be Revised
January	March and any future months
February	April and any future months
March	May and any future months
April	June and any future months
May	July and any future months
June	August and any future months
July	September and any future months
August	October and any future months
September	November and any future months
October	December and any future months
November	January and any future months
December	February and any future months

If Seller does not provide a Subsequent Energy Delivery Schedule by the above deadline scheduled energy for the omitted period shall equal the amounts scheduled by Seller for the same period during the previous year.

4.4 **Adjustment of Energy Delivery Schedule.** In the event of a Qualifying Curtailment, the Scheduled Monthly Energy Delivery will be adjusted, *pro rata*, ("**Adjusted Scheduled Monthly Energy Delivery**") for that month to determine Conforming Energy and Non-Conforming Energy. The Adjusted Scheduled Monthly Energy Delivery shall be calculated as follows:

$$SMED(adj) = SMED * \left( 1 - \sum_{i=1}^n \left( \frac{Hc_i}{Ht} * \frac{DRm - DRc_i}{DRm} \right) \right)$$

Where:

<i>SMED</i>	=	Scheduled Monthly Energy Delivery for the month in which the Qualifying Curtailment occurs
<i>SMED(adj)</i>	=	Adjusted Scheduled Monthly Energy Delivery for the month in which the Qualifying Curtailment occurs
<i>Hc<sub>i</sub></i>	=	the duration in hours of the Qualifying Curtailment ( <i>i</i> )
<i>Ht</i>	=	total hours in the month in which Qualifying Curtailment occurs
<i>DRc<sub>i</sub></i>	=	the Maximum Curtailed Facility Delivery Rate during the Qualifying Curtailment ( <i>i</i> )
<i>DRm</i>	=	the Maximum Facility Delivery Rate

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- $i$  = a Qualifying Curtailment
- $n$  = the number of Qualifying curtailments in the month

Where Qualifying Curtailments overlap, each distinct period of overlap shall be calculated as a separate Qualifying Curtailment such that no hour within a calendar month may figure into more than one Qualifying Curtailment.

4.5 Green Tags. From the Effective Date until the Expiration Date, Seller shall have title to the Green Tags immediately upon the generation of the Output at the Facility that gives rise to such Green Tags.

## **SECTION 5: PURCHASE PRICES**

5.1 Energy Purchase Price. Except as provided in Sections 5.3 and 5.4, PacifiCorp will pay Seller non-levelized, Conforming Energy or Non-Conforming Energy Purchase Prices for Net Output adjusted for the month and On-Peak Hours or Off-Peak Hours using the following formulae:

**Conforming Energy Purchase Price** =  $AR_{ce} * MPM$

**Non-Conforming Energy Purchase Price** = Minimum of [ $AR_{ce} * MPM$ ; Mid-C-85]

Where

$AR_{ce}$  = Conforming Energy annual rate from Table 1, below, for the year of the Net Output.

$MPM$  = monthly On-Peak or Off-Peak multiplier from Table 2, below, that corresponds to the month of the Net Output and whether the Net Output occurred during On-Peak Hours or Off-Peak Hours.

Mid-C-85 = 85% of weighted average of the average Index Price for the month, or portion of month, of Net Output.

Example calculations are provided in **Exhibit G**.

**Table 1: Conforming Energy Annual Rates**

<b>Year</b>	<b>Conforming Energy Annual Rate (<math>AR_{ce}</math>) \$/MWh</b>
2015	\$59.88
2016	\$60.96
2017	\$61.72
2018	\$63.38
2019	\$67.47
2020	\$71.56
2021	\$74.92
2022	\$77.54
2023	\$79.77

GENERAL CONDITIONS

2024	\$81.49
2025	\$84.53
2026	\$87.61
2027	\$88.96
2028	\$89.52
2029	\$90.61
2030	\$92.27
2031	\$94.77
2032	\$97.62
2033	\$100.15
2034	\$103.05
2035	\$106.89

**Table 2: Monthly On-Peak/Off-Peak Multipliers**

Month	On-Peak Hours	Off-Peak Hours
January	103%	94%
February	105%	97%
March	95%	80%
April	95%	76%
May	92%	63%
June	94%	65%
July	121%	92%
August	121%	106%
September	109%	99%
October	115%	105%
November	110%	96%
December	129%	120%

## 5.2 Payment.

For each Billing Period in each Contract Year, PacifiCorp shall pay Seller as follows:

For Conforming Energy delivered to the Point of Delivery:

$$\text{Payment} = (\text{CEnergy}_{\text{On-Peak}} * \text{CEPPrice}_{\text{On-Peak}} / 1000) + (\text{CEnergy}_{\text{Off-Peak}} * \text{CEPPrice}_{\text{Off-Peak}} / 1000)$$

For Non-Conforming Energy<sup>1</sup> delivered to the Point of Delivery:

$$\text{Payment} = (\text{NCEnergy}_{\text{On-Peak}} * \text{NCEPPrice}_{\text{On-Peak}} / 1000) + (\text{NCEnergy}_{\text{Off-Peak}} * \text{NCEPPrice}_{\text{Off-Peak}} / 1000)$$

Where:

CEnergy = Conforming Energy in kWh

CEPPrice = Conforming Energy Purchase Price in \$/MWh

<sup>1</sup> See definition of "Non-Conforming Energy".



NCEnergy	=	Non-Conforming Energy in kWh
NCEPPrice	=	Non-Conforming Energy Purchase Price in \$/MWh
On-Peak	=	the corresponding value for On-Peak Hours
Off-Peak	=	the corresponding value for Off-Peak Hours

Example calculations are provided in **Exhibit H**.

5.3 Inadvertent Energy. PacifiCorp may accept Inadvertent Energy at its sole discretion, but will not purchase or pay for Inadvertent Energy.

5.4 Energy Produced Prior to Effective Date. If Seller achieves all requirements for Commercial Operation after execution of this Agreement by both Parties, but prior to the approval by the Commission, PacifiCorp has agreed to purchase Net Output at the MID-C-85 rate defined above. PacifiCorp shall purchase Net Output during the interim period prior to Commission approval, such interim period not to exceed ninety (90) days. All terms and conditions of this Agreement (as modified by this Section 5.4) shall apply to the purchase and sale of Net Output during such interim period. However, if the Commission has not approved this Agreement within ninety (90) days of Commercial Operation, then such obligations shall cease.

## **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of any construction materially affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement bearing the stamp of a Licensed Professional Engineer that accurately depicts the Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Safe Operation. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generator Interconnection Agreement, Prudent Electrical Practices and in accordance with the Requirements of Law and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.3 Energy Acceptance; Curtailment. PacifiCorp shall not be obligated to purchase, receive, pay for, or pay any damages associated with Net Output (or associated Production Tax Credits or Environmental Attributes, if any) if such Net Output (or associated Production Tax Credits or Environmental Attributes) is not delivered to the System or Point of Delivery due to any of the following: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generator Interconnection Agreement, (b) the Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area (which would include the

## **GENERAL CONDITIONS**

Net Output) for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in order to meet its obligations to the Transmission Provider or Network Service Provider to operate within system limitations, (c) the Facility's Net Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output

6.4 Seller shall reasonably determine the MWh amount of Net Output curtailed pursuant to Section 6.3 after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 6.3 and to perform and confirm the calculations described in Section 4.4.

6.4.1 Upon termination of each curtailment, each Party having knowledge of the curtailment shall transmit to the other Party, within ten (10) business days, a written statement documenting the cause of curtailment, the time curtailment commenced, the amount of curtailment during each hour of the curtailment period, and the time curtailment ended.

6.4.2 At the end of each Billing Period, Seller shall calculate the curtailed energy, including the Maximum Curtailed Facility Delivery Rate, for each curtailment during that Billing Period and transmit a summary statement of such calculation to PacifiCorp prior to the end of the next month. Seller shall attest to the accuracy of its calculation of curtailed energy.

6.5 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor Transmission Provider and that interaction between PacifiCorp and PacifiCorp Transmission are at arms' length pursuant to the Tariff and FERC Order No. 888 and related regulation.

6.6 Scheduling Net Output. At least ninety (90) days before the first day of each calendar quarter, Seller shall provide PacifiCorp with written notice of the Facility's planned Net Output generation schedule ("Schedule") for that calendar quarter. At least ten (10) days before the beginning of each month, Seller shall notify PacifiCorp in writing of any changes or updates to the Schedule for that month. At or before 0730 MPT on the day before a given day of delivery, Seller shall notify PacifiCorp's generation coordinator desk, by telephoning 503-813-6090 or sending a facsimile to 503-813-6265, of any changes to the Schedule for the delivery day. Seller shall notify PacifiCorp's generation coordinator desk no later than two hours following the commencement of an event of Force Majeure, unscheduled outage or unscheduled derate, of the expected duration of any such event. The Schedule made pursuant to this Section 6.5 is independent of and does not alter the Energy Delivery Schedule.

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6.7 Delivery Exceeding the Maximum GIA Delivery Rate. Seller shall not deliver energy from the Facility to the Point of Delivery at a rate that exceeds the Maximum GIA Delivery Rate. Seller's failure to limit such deliveries to the Maximum GIA Delivery Rate shall be a breach of a material obligation subject to 11.1.8.

6.8 Outages.

6.8.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during any portion of the months of December, January, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement in a situation in which the vendor is not otherwise able to perform the guarantee work at a time other than during one of the months specified above. Seller shall, in **Exhibit D**, provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one (1) month, but no more than three (3) months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule more than one hundred fifty (150) hours of Planned Outages for each calendar year. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval may be withheld by PacifiCorp in its sole discretion.

6.8.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five (5) business days before the outage begins (or such shorter period to which PacifiCorp may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp. Seller shall take all reasonable measures and use best efforts consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: June 15 through June 30, July, August, and September 1 through September 15. Seller shall include in such notice of a proposed Maintenance Outage the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller may provide notices under this Section 6.8.2 orally. Seller shall confirm any such oral notification in writing as soon as practicable. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with PacifiCorp's request to modify the schedule for a Maintenance Outage if such modification has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity of the Facility during such Maintenance Outage and any changes in the Maintenance Outage completion date and time. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

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6.8.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp, of any Forced Outage of the Facility. Such report shall include the amount of generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date and time of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. If the Forced Outage resulted in more than 15% of the Facility Capacity Rating of the Facility being unavailable, Seller shall confirm the oral report in writing as soon as practicable. Seller shall take all reasonable measures and exercise its best efforts consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.8.4 Notice of Deratings and Outages. Without limiting other notice requirements, Seller shall notify PacifiCorp, via telephone to a number specified by PacifiCorp, of any limitation, restriction, derating or outage known to Seller that affects the generation capacity of the Facility in an amount greater than five percent (5%) of the Facility Capacity Rating for the following day. Seller shall promptly update such notice to reflect any material changes to the information in such notice.

6.9 Effect of Outages on Estimated Output. Seller shall include Planned Outages and Maintenance Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility into the Scheduled Monthly Energy Delivery amounts in the Energy Delivery Schedule set forth in **Exhibit D**.

6.10 Increase to the Maximum Facility Delivery Rate. Seller may, in accordance with this Section 6.10 and upon written approval by PacifiCorp, increase the Maximum Facility Delivery Rate, unless, after such increase, under normal or average design conditions the Net Output would exceed the Maximum Monthly Purchase Obligation in any given month. PacifiCorp approval of such increase is conditioned on the Public Utility Regulatory Policies Act (16 U.S.C. 824a-3) and other applicable law requiring PacifiCorp to purchase the incremental Net Output. If Seller increases the Maximum Facility Delivery Rate, PacifiCorp will continue to pay for base Net Output at the rate(s) prescribed by Section 5 of this Agreement, and PacifiCorp will pay for incremental Net Output resulting from the increase to the Maximum Facility Delivery Rate at the rate(s) prescribed by the Commission at the time of PacifiCorp's approval, if granted, of the increase in the Maximum Facility Delivery Rate. PacifiCorp shall specify in its approval, if granted, a reasonable means of distinguishing such base Net Output from such incremental Net Output.

6.11 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors ("PacifiCorp Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any acceptance tests, and (c) for other reasonable purposes at the reasonable request of PacifiCorp.

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## **SECTION 7: MOTIVE FORCE**

Prior to the execution of this Agreement, Seller provided to PacifiCorp a motive force plan attached hereto as **Exhibit F-1**, demonstrating to PacifiCorp's reasonable satisfaction: (1) the feasibility that Facility Net Energy will equal the Energy Delivery Schedule in **Exhibit D** for the duration of this Agreement; and (2) the likelihood that the Facility, under average design conditions, will generate at no more than 10 aMW in any calendar month, together with a certification from a Licensed Professional Engineer attached hereto as **Exhibit F-2**, certifying to PacifiCorp that the Facility can reasonably be expected to perform as predicted in the motive force plan for the duration of this Agreement. The motive force plan included, or was accompanied by, all Required Facility Documents relating to Seller's right to use the motive force as reasonably determined by PacifiCorp, which accompanying documents, if any, are attached hereto as part of **Exhibit F-1**.

## **SECTION 8: METERING**

8.1 **Metering Adjustment.** Metering will be performed at the location and in the manner specified in **Exhibit B** and the Generator Interconnection Agreement. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of power flowing into the System at the Point of Delivery.<sup>2</sup> The loss adjustment shall be a reduction of 2% of the kWh energy production recorded on the Facility output meter until actually measured and calibrated at the meter by PacifiCorp Transmission and documented in a signed letter to Seller from PacifiCorp's QF Contracts Administrator.

8.2 **Metering Errors.** If any inspections or tests made pursuant to the Generator Interconnection Agreement discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered.

8.3 **Telemetering.** In accordance with the Generator Interconnection Agreement, Seller shall provide telemetering equipment and facilities capable of transmitting to Transmission Provider (who will share it with PacifiCorp as authorized by **Exhibit I**, "Seller Authorization to Release Generation Data to PacifiCorp") the following information concerning the Facility on a real-time basis, and will operate such equipment when requested by PacifiCorp to indicate:

- (a) instantaneous MW output at the Point of Delivery;

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<sup>2</sup> If station service is supplied via separate facilities, PacifiCorp will deduct station service from the metered facility output to calculate Net Output.

- (b) Net Output; and
- (c) the Facility's total instantaneous generation capacity.

#### 8.4 Monthly Reports and Logs and Other Information.

8.4.1 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the term of this Agreement commencing on the Commercial Operation Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within thirty (30) calendar days after the end of the Billing Period to which the fault log applies.

8.4.2 Upon the request of PacifiCorp, Seller shall provide PacifiCorp the manufacturers' guidelines and recommendations for maintenance of the Facility equipment.

8.4.3 By each January 10 following the Commercial Operation Date, Seller shall provide to PacifiCorp written certification that Seller has completed all the manufacturers' guidelines and recommendations for maintenance of the Facility equipment applicable to the previous calendar year.

8.4.4 At any time from the Effective Date, one (1) year's advance notice of the termination or expiration of any agreement pursuant to which the Facility or any equipment relating thereto is upon the Facility site; provided that the foregoing does not authorize any early termination of any land lease or other rights in real property associated with the Facility or Premise.

8.4.5 As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises. PacifiCorp shall have no responsibility or liability for any Environmental Contamination at the Facility or Premise. Seller indemnifies and holds PacifiCorp harmless for any liability, costs or expenses associated with Environmental Contamination at or on the Facility or Premise.

8.5 Maintenance of Metering Equipment. To the extent not otherwise provided in the Generator Interconnection Agreement, PacifiCorp shall inspect, test, repair and replace the metering equipment periodically, or at the request of Seller if Seller has reason to believe metering may be off and requests an inspection in writing. To the extent not otherwise provided in the Generator Interconnection Agreement, all PacifiCorp's costs relating to designing, installing, maintaining, and repairing metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

#### GENERAL CONDITIONS

## **SECTION 9: BILLINGS, COMPUTATIONS AND PAYMENTS**

9.1 **Payment for Net Output.** On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generator Interconnection Agreement, and any other agreement(s) between the Parties. Any such offsets shall be separately itemized on the statement accompanying each payment to Seller.

9.2 **Corrections.** PacifiCorp shall have up to thirty-six (36) months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Inadvertent Energy, calibration error, or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to correct the error in a reasonable time.

9.3 **Interest on Overdue Amounts.** Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) per annum from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 **Disputed Amounts.** If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Except as provided in Section 9.2, any such notice of dispute shall be provided within two (2) years of the date of the invoice in which the error first occurred. Failure to provide such notice in the time provided in this Section shall act as a waiver of the claim and the billing shall be final. If any amount disputed by such Party is determined to be due to the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days after such determination or resolution, along with interest in accordance with Section 9.3.

## **SECTION 10: SECURITY**

### **10.1 Delay Security:**

10.1.1 **Duty to Post Security.** By the Effective Date Seller shall post a Letter of Credit, cash or a parental guaranty, each in a form and from an entity acceptable to PacifiCorp, in the amount of \$21,645 as calculated pursuant to Section 10.1.2 ("**Delay Security**"). To the extent PacifiCorp receives payment from the Delay Security, Seller shall, within fifteen (15) calendar days, restore the Delay Security as if no such deduction had occurred. The obligation to provide Delay Security shall not apply to the extent that Commercial Operation has been achieved as of or prior to the Effective Date.

10.1.2 **Calculation of Delay Security.** The dollar value of Delay Security shall equal the greater of: (1) forty-five dollars (\$45) multiplied by the Maximum Facility Delivery Rate with the Maximum Facility Delivery Rate being measured in kW; or (2) the sum of the products, for each of the first three calendar months after the Scheduled Commercial Operation Date, of:

## **GENERAL CONDITIONS**

the energy in the Initial Year Energy Delivery Schedule for the month (kWh) multiplied by the monthly weighted average On-Peak and Off-Peak Conforming Energy Purchase Price for the months (\$/MWh) divided by 1000.

Such amount shall be fixed upon execution of this Agreement.

10.1.3 Right to Draw on Security. PacifiCorp shall have the right to draw on the Delay Security to collect Delay Liquidated Damages. Commencing on or about the first of each month, PacifiCorp will invoice Seller for Delay Liquidated Damages incurred, if any, during the preceding month. If insufficient Delay Security is available, Seller shall pay PacifiCorp for invoiced Delay Liquidated Damages no later than five business days after receiving such invoice. The Parties will make billings and payments for Delay Liquidated Damages in accordance with Section 9.

10.1.4 Release of Delay Security. Unless PacifiCorp disputes whether Seller has paid all Delay Liquidated Damages, PacifiCorp shall release the Delay Security on the earlier of the 30th calendar day following commencement of Commercial Operation or the 60th calendar day following PacifiCorp's termination of this Agreement.

10.1.5 Default. Seller's failure to post and maintain Delay Security in accordance with Section 10.1 will constitute an event of default, unless cured in accordance with Section 11.1.1 of this Agreement.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 The following events shall constitute defaults under this Agreement:

11.1.1 Non-Payment. A Party's failure to make a payment when due under this Agreement, or post and maintain security in conformance with the requirements of Section 10, or maintain insurance in conformance with the requirements of Section 13 of this Agreement, if the failure is not cured within ten (10) business days after the non-defaulting Party gives the defaulting Party a notice of the default.

11.1.2 Breach of Representation. Breach by a Party of a representation or warranty set forth in this Agreement, if such failure or breach is not cured within thirty (30) calendar days following written notice.

11.1.3 Default on Other Agreements. Seller's failure to cure any default under the Generator Interconnection Agreement or any other agreement between the parties related to this Agreement, the Generator Interconnection Agreement, or the Facility within the time allowed for a cure under such agreement or instrument.

11.1.4 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is

## **GENERAL CONDITIONS**



not withdrawn or dismissed within sixty (60) calendar days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.5 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, within fifteen (15) business days from the date of such request.

11.1.6 Sale to Third-Party. Seller's sale of Net Output to an entity other than PacifiCorp, as prohibited by Section 4.2.

11.1.7 Non-Delivery. Unless excused by an event of Force Majeure, Seller's failure to deliver any Net Energy to the Point of Delivery for three consecutive calendar months, if the failure is not cured within thirty (30) calendar days after PacifiCorp gives Seller notice of the default.

11.1.8 A Party otherwise fails to perform any material obligation (including but not limited to failure by Seller to meet any deadline set forth in Section 2.2) imposed upon that Party by this Agreement if the failure is not cured within thirty (30) calendar days after the non-defaulting Party gives the defaulting Party notice of the default; *provided, however,* that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional ninety (90) calendar days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2 In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default. If the default has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement. The rights provided in this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights.

11.3 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output from the facility using the same motive force to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller do so subject to the terms of this Agreement, including but not limited to the purchase prices (as set forth in Section 5), until the Expiration Date (as set forth in Section 2.1).

11.4 If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp for the energy and associated capacity that Seller was scheduled to provide for a period of twelve (12) months ("**Replacement Period**") from the date of termination plus the estimated administrative cost to acquire the replacement power ("**Net Replacement Power Costs**"). Net Replacement Power Costs equals the sum of: the Replacement Price times the

#### GENERAL CONDITIONS

Replacement Volume, for each day of the Replacement Period, plus the estimated administrative cost to the utility to acquire replacement power.

Where:

“**Replacement Price**” equals the positive difference, if any, of the Index Price minus the weighted average of the On-Peak and Off-Peak Conforming Energy Prices; and

“**Replacement Volume**” equals the applicable Scheduled Monthly Energy Delivery divided by the number of days in that month.

Amounts owed by Seller pursuant to this Section shall be due within five (5) business days after an invoice from PacifiCorp for the same. The Parties agree that the damages PacifiCorp would incur due to termination resulting from Seller’s default would be difficult or impossible to predict with certainty, and that the damages in this Section 11.4 are an appropriate approximation of such damages.

#### 11.5 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted default security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted default security, or if PacifiCorp has exhausted the default security, PacifiCorp may (in addition to any other remedy at law) collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller’s default on its commercial or financing agreements necessary for its continued operation of the Facility.

### SECTION 12: INDEMNIFICATION AND LIABILITY

#### 12.1 Indemnities.

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all losses, fines, penalties, claims, actions or suits, including costs and attorney’s fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller’s side of the Point of Delivery, (c) Seller’s operation and/or maintenance of the Facility or activities on the Premise, or (d) arising from Seller’s breach of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

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12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Warranty. Any review, acceptance or failure to review Seller's design, specifications, equipment or facilities shall not be an endorsement or a confirmation by PacifiCorp and PacifiCorp makes no warranties, expressed or implied, regarding any aspect of Seller's design, specifications, equipment or facilities, including, but not limited to, safety, durability, reliability, strength, capacity, adequacy or economic feasibility.

12.4 CONSEQUENTIAL DAMAGES. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section 13. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder upon the Effective Date and on each annual anniversary of the Effective Date or as otherwise requested by PacifiCorp. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an

### **GENERAL CONDITIONS**

insurance company or companies rated not lower than "A" by the A.M. Best Company the insurance coverage specified in Exhibit 1 to this Agreement.

#### **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order, **icing events within the immediate water source used as the Facility's primary motive force that causes the Facility to reduce energy production** or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which is in each case (i) beyond the reasonable control of such Party, (ii) by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and (iii) by the exercise of due diligence, such Party shall be unable to prevent or overcome. Force Majeure, however, specifically excludes the cost or availability (except as provided above) of fuel or motive force to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, both Parties shall be excused from whatever performance is affected by the event of Force Majeure, provided that:

14.1.1 the non-performing Party, shall, within five (5) days after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence, including the start date of the Force Majeure, the cause of Force Majeure, whether the Facility remains partially operational and the expected end date of the Force Majeure;

14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform; and

14.1.4 the non-performing Party shall provide prompt written notice to the other Party at the end of the Force Majeure event detailing the end date, cause there of, damage caused there by and any repairs that were required as a result of the Force Majeure event, and the end date of the Force Majeure.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

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14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six (6) months after the occurrence of the event of Force Majeure.

#### **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more entities, each such entity shall be jointly and severally liable for Seller's obligations under this Agreement.

#### **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Idaho, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **SECTION 19: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

PacifiCorp's compliance with the terms of this Agreement is conditioned on Seller's submission to PacifiCorp prior to the Commercial Operation Date and Seller's maintenance thereafter of copies of all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility.

#### **SECTION 20: SUCCESSORS AND ASSIGNS**

20.1 This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. This

#### **GENERAL CONDITIONS**



Agreement may be assigned by either Party upon 30 business days (or longer if reasonably required) prior written notice and opportunity to object by the other Party; provided that:

20.1.1 Any entity with which PacifiCorp may consolidate, or into which it may merge, or to which it may convey or transfer substantially all of its electric utility assets, shall automatically, without further act, and without need of consent or approval by the Seller, succeed to all of PacifiCorp's rights, obligations, and interests under this Agreement.

20.1.2 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement, provided that Seller promptly notifies the PacifiCorp of any such assignment.

20.1.3 Seller shall have the right to assign this Agreement, without the consent of the PacifiCorp, for collateral security purposes to aid in providing financing for the Facility, provided that the Seller will promptly notify PacifiCorp of any such assignment.

20.1.4 Any attempted assignment that violates this article is void and ineffective. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the assignor. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

#### **SECTION 21: ENTIRE AGREEMENT**

21.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

21.2 By executing this Agreement, each Party releases the other from any claims, known or unknown, that may have arisen prior to the execution of this Agreement with respect to the Facility and any predecessor facility proposed to have been constructed on the site of the Facility and using the same motive force.

#### **SECTION 22: JURY TRIAL WAIVER**

TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

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### **SECTION 23: NOTICES**

All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232  Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291  Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Consolidated Irrigation Company 33 S 1 <sup>st</sup> E Preston, ID 83263-1301 Phone: (208) 852-2364 Facsimile: (208) 852-2365 Federal Tax ID No: 300716204 Duns: 078492157
<b>All Invoices:</b>	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as above)
<b>Scheduling:</b>	Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as above)
<b>Payments:</b>	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as above)
<b>Wire Transfer:</b>	Bank One N.A. To be provided in separate letter from PacifiCorp to Seller	Confidential information to be provided separately
<b>Credit and Collections:</b>	Attn: Credit Manager, Suite 700 Phone: 503-813-7280 Fax: 503-813-5609	(same as above)
<b>With Additional Notices of an Event of Default or Potential Event of Default:</b>	Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-6761	(same as above)

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The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp

By: \_\_\_\_\_

Name: Bruce Griswold

Title: Director Short Term Origination and  
QF Contracts

Date: \_\_\_\_\_

Consolidated Irrigation Company (Seller)

By: 

Name: Brian Jensen

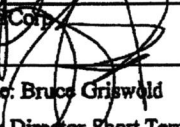
Title: President

Date: 9-2-15

GENERAL CONDITIONS

The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

<p>Pacific Corp.</p> <p>By: </p> <p>Name: Bruce Griswold</p> <p>Title: Director Short Term Origination and QF Contracts</p> <p>Date: <u>September 11, 2015</u></p> <p>BWS 9-2-2015</p>	<p>Consolidated Irrigation Company (Seller)</p> <p>By: _____</p> <p>Name: Brian Jensen</p> <p>Title: President</p> <p>Date: _____</p>
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GENERAL CONDITIONS

## **EXHIBIT 1: INSURANCE**

**Required Policies and Coverages.** Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-/VII" by the A.M. Best Company the insurance coverage specified below:

1.1.1 **Workers' Compensation.** Seller shall comply with any applicable laws or statutes, state or federal jurisdiction, where Seller performs work.

1.1.2 **Employers' Liability.** Seller shall maintain employers' liability insurance with minimum limits covering bodily injury for: \$500,000 – each accident, \$500,000 by disease – each employee, and \$500,000 by disease – policy limit.

1.1.3 **Commercial General Liability.** Seller shall maintain insurance to include premises and operations, contractual liability, with a minimum single limit of \$1,000,000 each occurrence to protect against and from loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

1.1.4 **Business Automobile Liability.** Seller shall secure and continuously carry business automobile liability insurance with a minimum single limit of \$1,000,000 each accident covering bodily injury and property damage with respect to Seller's vehicles whether owned, hired or non-owned.

1.1.5 **Umbrella/excess Liability.** Seller shall maintain umbrella or excess liability insurance on an occurrence and following form basis with a minimum limits as follows:

- (a) Facility Capacity Rating under 200 KW - \$1,000,000
- (b) Facility Capacity Rating at or above 200 KW - \$5,000,000

1.1.6 **Property Insurance.** Seller shall maintain property insurance covering equipment and structures in an amount at least equal to the full replacement value for "all risks" of physical loss or damage, including coverage for earth movement, flood, boiler and machinery, and business interruption. The policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. Property insurance will be maintained in accordance with terms available in the insurance market for similar facilities.

### **1.2 Additional Provisions or Endorsements:**

1.2.1 Except for workers' compensation and property insurance, the policies required herein shall include provisions or endorsements as follows:

- (a) naming PacifiCorp, parent, divisions, officers, directors and employees as additional insureds;
- (b) include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and
- (c) cross liability coverage or severability of interest.



1.2.2 Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PacifiCorp.

1.3 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) confirming Seller's compliance with the insurance requirements hereunder. Insurance certificate confirming compliance shall be provided to PacifiCorp by Seller at least annually and each time a new insurance policy is issued or becomes effective.

1.4 Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Seller shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

1.5 Periodic Review. PacifiCorp may review this schedule of insurance as often as once every two (2) years. PacifiCorp may in its discretion require Seller to make reasonable changes to the policies and coverages described in this Exhibit to the extent reasonably necessary to cause such policies and coverages to conform to the insurance policies and coverages typically obtained or required for power generation facilities comparable to the Facility at the time PacifiCorp's review takes place.

## EXHIBIT A: DESCRIPTION OF SELLER'S FACILITY

[Completed by Seller]

Seller's Facility consists of One (1) generator manufactured by TES More specifically, the generator at the Facility is described as:

### A. Manufacturer's Nameplate Data:

Type (synchronous or inductive): Induction

Model: 25" HCTI Twin Jet Turgo Impluse Turbine Driving 481 kW TES Model

GAK500M14 Generator

Number of Phases: 3

Rated Output (kW): 481 Rated Output (kVA): 616

Rated Voltage (line to line): 480

Rated Current (A): Stator: 742 A; Rotor: N/A due to asynchronous generator A

Maximum kW Output: 481 kW Maximum kVA Output: kVA 616

Minimum kW Output: 100 kW

Facility Capacity Rating: 69 kW at 480 volts Maximum Facility Delivery

Rate: 413-548 (if heater on) kW at 480

Maximum GIA Delivery Rate: 500 kW instantaneous

Describe (1) any differences between the maximum output of the generator(s) and their Nameplate Capacity Rating(s) and (2) any differences between the Facility Capacity Rating, the Maximum Facility Delivery Rate, and the Maximum GIA Delivery Rate:

Station service requirements, and other loads served by the Facility, if any, are described as follows: Station service is estimated to be 15 KW

Location of the Facility: The Facility is located in Franklin County, Idaho. The location is more particularly described as follows:

LAT 42°07'57.6 LONG 111°46'30.5

### Power factor requirements:

Rated Power Factor (PF) or reactive load (kVAR): 0.95-0.98 Lag PF

## **EXHIBIT B**

### **POINT OF DELIVERY / PARTIES' INTERCONNECTION FACILITIES**

[diagram and description provided by Seller]

#### **Instructions to Seller:**

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.
  1. The interconnection is located Circuit PRS13, Preston #13, out of Preston substation. The point of metering and the Point of Delivery are described in the PacifiCorp one-line diagram for project Q0437
  2. The one-line diagram is attached

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

Qualifying Facility No.: Not Required < 1,000 KW

Generator Interconnection Agreement: Dated April 30, 2014 has been provided

FERC Hydro Facility License: Docket No. CD15-2-000 Dated January 26, 2015

Water Rights: 13-7853

Proof of Insurance: Provided May 29, 2015

Evidence showing agreement for retail electric service: Retail bill provide on June 22, 2015



Holden Kidwell  
Hahn & Crapo P.L.L.C.  
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200  
PO Box 50130  
Idaho Falls, Idaho 83405

Tel: (208) 523-0620  
Fax: (208) 523-9518  
www.holdenlegal.com

Email: [rharris@holdenlegal.com](mailto:rharris@holdenlegal.com)

August 31, 2015

PacifiCorp  
c/o Lyle Porter  
Consolidated Irrigation Company  
33 S. 1<sup>st</sup> E.  
Preston, ID 83263

**RE: *PacifiCorp and Consolidated Irrigation Company Power Purchase Agreement;  
Statement that Consolidated Has Obtained All Required Facility Documents.***

Dear Lyle:

As you know, Holden, Kidwell, Hahn & Crapo, P.L.L.C. represents Consolidated Irrigation Company ("CIC"). We have been asked to provide an opinion addressed to PacifiCorp as required under Paragraph 1.6.4 of the *Power Purchase Agreement Between Consolidated Irrigation Company and PacifiCorp* (the "Agreement"). We are providing this letter to you, and trust that you will forward it to PacifiCorp when the Agreement is executed, which will bind the parties and make CIC subject to the provisions of Paragraph 1.6.4.

We previously provided a similar letter dated May 8, 2015, but understand that PacifiCorp has requested additional language that is now contained in this letter. We also understand that the Agreement has been further negotiated between PacifiCorp, through their in-house counsel, and Joe Miller, CIC's counsel retained to assist in negotiating the Agreement. We understand that Paragraph 1.6.4 has not been amended in the Agreement negotiations, and consequently, understand that this letter remains necessary in order to finalize the transaction with PacifiCorp.

Paragraph 1.6.4 of the Agreement requires "an opinion from an attorney in good standing in Idaho, stating that [CIC] has obtained all Required Facility Documents . . .". The term "Required Facility Documents" is a defined term under the Agreement, and according to section Paragraph 1.6.4, consists of "all deeds, titles, leases, licenses, permits, authorizations, and agreements demonstrating that [CIC] controls the necessary property rights, (e.g., site lease), rights to motive force, and government authorizations to construct, operate, and maintain the Facility, including without limitation, those set forth on Exhibit C."

While we are not obligated to provide copies of the Required Facility Documents under the terms of Paragraph 1.6.4, enclosed with this letter are copies of such documents, specifically:

1. *Purchase and Sale Agreement* between Webster Farm, L.L.C. and CIC (purchase of

*Established in 1896*



Lyle Porter  
August 31, 2015  
Page 2 of 2

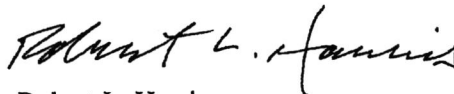
property for powerhouse and associated easements necessary for connection to PacifiCorp power grid).

2. Letter from FERC to CIC, January 26, 2015 (notice from FERC that the CIC facility meets conduit exemption (section 30(a) of the FPA)).
3. *Permit to Appropriate Water* (issued by the Idaho Department of Water Resources on March 5, 2015).

In addition, throughout construction of the power facilities, CIC has been in constant communication with Franklin County officials relative to supervision and construction of such facilities within the scope of the County's road right-of-way. The County did not require execution of any documents in order for the facilities to be constructed, but County officials verbally authorized placement of such facilities.

In light of the foregoing, I certify that CIC has obtained all Required Facility Documents as required under the Agreement. I certify that I am an attorney in good standing in the State of Idaho required under the Agreement as evidenced by the enclosed printout from the Idaho State Bar.

Best Regards,



Robert L. Harris  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

## PURCHASE AND SALE AGREEMENT

---

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is executed to be effective as of October 30, 2012, by and between WEBSTER FARM, L.L.C., an Idaho limited liability company, ("Seller"), and CONSOLIDATED IRRIGATION COMPANY, an Idaho corporation, ("Buyer").

### RECITALS:

- A. Seller is the owner of the Property (as defined below) located in Franklin County, Idaho.
- B. Seller desires to sell to Buyer and Buyer desires to purchase from Seller, the Property, a parcel of property for the construction of a certain hydroelectric power facility, and easements associated with the power facility, upon the terms, conditions and provisions set forth in this Agreement.

### AGREEMENTS:

NOW, THEREFORE, in consideration of the promises, covenants, representations and warranties set forth in this Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as set forth below.

1. **DEFINITIONS.** The following terms have the following meanings when used in this Agreement:

**"Agreement"**. This Purchase and Sale Agreement, including all exhibits attached to this Agreement.

**"Business Day"**. A day other than a Saturday, Sunday or day on which banking institutions in the City of Preston, Idaho are authorized or required by law or executive order to be closed.

**"Cash"**. United States currency represented by cash in hand, certified or cashier's check, wire transfer or other readily available funds.

**"Closing"**. The consummation of the Transaction, as evidenced by the delivery of all required funds and documents to Escrow Agent and the disbursement or delivery of such funds and documents by Escrow Agent in accordance with this Agreement and any other consistent instructions.

25. INCORPORATION BY REFERENCE. All exhibits to this Agreement are fully incorporated into this Agreement as though set forth in full.

26. GOVERNING LAW. This Agreement is governed by, and construed and enforced in accordance with, the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first written above.

**SELLER:**

Webster Farm, L.L.C.



Print: Dennis Webster  
Its: Managing Member

**BUYER:**

Consolidated Irrigation Company



Print: Lyle Porter  
Its: President

This Purchase and Sale Agreement is hereby acknowledged and accepted by Escrow Agent.

**ESCROW AGENT:**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

G:\WFDA\CAIRLE\16729 CONSOLIDATED IRRIGATION CO\0478A 10 30 2012.DOCX

**FEDERAL ENERGY REGULATORY COMMISSION**  
Washington, D. C. 20426

**OFFICE OF ENERGY PROJECTS**

Docket No. CD15-2-000— Idaho  
Glendale Conduit Hydro Project  
Consolidated Irrigation Company

**January 26, 2015**

Lyla Dettmer  
Consolidated Irrigation Company  
98 East 800 North Suite #5  
Preston, ID 83263

**Subject: Determination that the Glendale Conduit Hydro Project Meets Qualifying  
Conduit Hydropower Facility Criteria**

Dear Ms. Dettmer:

On November 12, 2014, you filed a notice of intent, pursuant to section 30(a) of the Federal Power Act (FPA), 16 U.S.C. § 823a (2012), as amended by Section 4 of the Hydropower Regulatory Efficiency Act of 2013, Pub. L. 113-23, § 4a, 127 Stat. 493 (2013), to construct a qualifying conduit hydropower facility, the Glendale Conduit Hydro Project, to be located near the city of Preston in Franklin County, Idaho.

On November 19, 2014, Commission staff issued a public notice that preliminarily determined that the project met the statutory criteria for a qualifying conduit hydropower facility, and thus was not required to be licensed under Part I of the FPA. The notice established a 45-day period for entities to contest whether the project met the criteria. On December 19, 2014 and supplemented on January 5, 2015, the State of Idaho, ex rel., the Department of Idaho Fish and Game and the Idaho Water Resource Board filed a notice of intervention and comments. The comments do not contest that the project meets the qualifications, but raise concerns for the fisheries in the vicinity. Qualifying conduit hydropower facilities remain subject to other applicable federal, state, or local laws and regulations. Accordingly, this letter constitutes a written determination that the Glendale Conduit Hydro Project meets the qualifying criteria under FPA section 30(a), and is not required to be licensed under Part I of the FPA.

Consolidated Investigation Complaint  
Glenora Hydro Project  
Docket No. C7715-2-004-1134b

January 26, 2015

17th December  
Glenora Hydro Project  
2270 1st Avenue  
Preston BC V3R 5C1

Subject: Investigation into the Glenora Hydro Project and its  
Glenora Hydro Project Facility

Dear Mr. [Name]

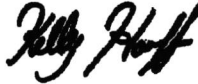
On November 12, 2014, you filed a notice of intent pursuant to section 30(a) of  
the Public Access Act (PAA) to the Glenora Hydro Project, as amended by section 30(a) of  
the Hydroelectricity Efficiency Act of 2013, Part 1, 413-33, 2 and 12, and 103  
(201 /), to construct a qualifying cogeneration facility, the Glenora Hydro  
Hydro Project, to be located near the city of Preston in Franklin County, Idaho.

On November 19, 2014, Commission staff issued a public notice and subsequently  
decommissioned and was given to the statutory criteria for a qualifying cogeneration facility  
facility, and that was not required to be licensed under Part 1 of the PAA. The notice  
established a 45-day period for entities to contest whether the project met the criteria. On  
January 2, 2015, the State of Idaho, the Department of Idaho Fish and Game and the Idaho Water Resource Board, and the  
of intervention and comments. It is requested that the project meet the  
qualifications and raised concerns for the facilities in the vicinity. Qualifying cogeneration  
hydroelectric facilities remain subject to other applicable federal, state or local laws and  
regulations. Accordingly, this letter constitutes a written determination that the Glenora  
Hydro Project meets the qualifying criteria under PAA section 30(a) and is that  
required to be licensed under Part 1 of the PAA.



If you have any questions, please contact Mr. Robert Bell at (202) 502-6062 or [robert.bell@ferc.gov](mailto:robert.bell@ferc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Houff". The signature is stylized with a large, looped "K" and a cursive "Houff".

Kelly Houff  
Chief, Engineering Resources Branch  
Division of Hydropower Administration  
and Compliance

**Attorney Roster Search - Individual Attorney Result  
(as of 5/8/15)**

**Robert Lynn Harris**

**Address:** PO Box 50130

**Boise Falls, ID 83405**

**Firm:** Holden, Kidwell, Hahn & Crapo, PLLC

**Phone:** (208) 523-0620 Ext.

**FAX:** (208) 523-9318

**E-Mail Address:** rharris@holdenlegal.com

**Website Address:** www.holdenlegal.com

**ISB Membership Number:** 7018

**Admittance Date:** Sep/30/2004

**Status:** Active

**Address Change Form**

The information above is based on the Idaho State Bar records as of the date listed above. To send us an update on your own listing, please use the online Address Change Form or send an email to the Licensing Department. Please notify the Licensing Department if you find that another attorney's information is incorrect. Questions on attorney status and good standing should also be directed to the Licensing Department at (208) 334-4500.

**Current Status Definitions**

Contact the Bar Counsel's Office at (208) 334-4500 to request a disciplinary history on an attorney.

Information on former members of the Idaho State Bar is limited to name, admission date and status. The online records include former members going back to approximately 1994. Records on former members from before 1994 are not available online. Please contact the Licensing Department for more information on former members.

P.O. Box 895 Boise Idaho 83701 ph:(208) 334-4500 fax:(208) 334-4515

Idaho State Bar | Idaho Law Foundation | Idaho.gov | Site Map | Contact Us |  

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**

NO. 13-07853

Priority: May 21, 2012

Maximum Diversion Rate: 60.00 CFS

This is to certify, that **CONSOLIDATED IRRIGATION CO**  
33 S 1ST E  
PRESTON ID 83263

has applied for a permit to appropriate water from:

Source: CUB RIVER  
MINK CREEK

Tributary: BEAR RIVER  
BEAR RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
POWER	01/01 to 12/31	60.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

CUB RIVER	NW¼NE¼NW¼	Sec. 8	Twp 15S	Rge 41E, B.M.	FRANKLIN County
MINK CREEK	SW¼NE¼SE¼	Sec. 28	Twp 13S	Rge 41E, B.M.	FRANKLIN County
CUB RIVER	SW¼SE¼NW¼	Sec. 10	Twp 15S	Rge 40E, B.M.	FRANKLIN County
(Injection)					
MINK CREEK	SW¼SE¼NW¼	Sec. 10	Twp 15S	Rge 40E, B.M.	FRANKLIN County
(Injection)					

PLACE OF USE: POWER

Twp	Rge	Sec	NE	NW	SW	SE	Total
15S	40E	10					

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted prior before April 01, 2020.
2. Subject to all prior water rights.
3. This right does not authorize the diversion of water to be used solely for power generation purposes. Water used to generate power under this right must be diverted and beneficially used under separate, existing water rights.
4. The diversion and use of water from Mink Creek described under this right is limited to a season of use from 04/20 to 09/30.
5. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 13A.

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**

NO. 13-07853

**CONDITIONS OF APPROVAL**

7. The term of this permit shall run concurrently with the length of any effective energy sales agreement between the right holder and a purchasing utility. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right permit or subsequent water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the prior term and any prior conditions on the water right permit or subsequent water right license shall remain in effect.
8. If it has not been previously provided, the permit holder shall submit a copy of the FERC exemption order and a copy of the effective energy sales/purchase agreement for this project in conjunction with the Proof of Beneficial Use statement.
9. The rights for the use of water acquired under this right shall be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
10. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
11. This right does not constitute Idaho Public Utilities Commission approval that may be required.
12. Use of water under this right shall be non-consumptive.
13. This right does not grant any right-of-way or easement across the land of another.
14. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 5<sup>th</sup> day of March, 2015.

  
for GARY SPACKMAN  
Director

**EXHIBIT D**  
**SUBSEQUENT ENERGY DELIVERY SCHEDULE**

<b>Consolidated Irrigation Company</b>		<b>481 kW Nameplate Capacity</b>	
<b>Base Estimates</b>	<b>Scheduled Monthly Energy Delivery (kWh)</b>	<b>Ave kW/mo</b>	<b>Monthly NET Capacity Factor</b>
January	134,634	184	.36
February	123,463	169	.33
March	135,277	185	.36
April	232,581	319	.63
May	301,024	412	.81
June	311,481	427	.84
July	318,481	436	.85
August	233,219	319	.63
September	272,688	374	.73
October	169,139	232	.45
November	156,312	214	.42
December	128,050	175	.34
<b>TOTAL:</b>	<b>2,516,348</b>	<b>287</b>	<b>.56</b>

Planned Outages. Seller will provide a Planned Outage schedule annually not to exceed 150 hours per year.



## **EXHIBIT E**

### **START-UP TESTING**

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to:

1. Test of mechanical and electrical equipment;
2. Calibration of all monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Point-to-point continuity tests;
6. Bench tests of protective devices; and
7. Tests required by manufacturer(s) and designer(s) of equipment.

Required start-up tests are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PacifiCorp's electrical system, which may include but are not limited to:

1. Turbine/generator mechanical runs and functionality;
2. System operation tests;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Excitation and voltage regulation operation tests;
7. Auto stop/start sequence;
8. Completion of any state and federal environmental testing requirements; and
9. Tests required by manufacturer(s) and designer(s) of equipment.

**EXHIBIT F-1**  
**MOTIVE FORCE PLAN**

Month	Average Energy (kWh)
January	134,634
February	123,463
March	135,277
April	232,581
May	301,024
June	311,481
July	318,481
August	233,219
September	272,688
October	169,139
November	156,312
December	128,050

Based on average flows provided by the Consolidated Irrigation Company the hydro plant will produce the above average kWh per month

**EXHIBIT F-2**  
ENGINEER'S CERTIFICATE  
OF  
MOTIVE FORCE PLAN

I, Brent E. Gardner hereby certify that based on the water use records available to me that the Glendale Hydro project will have the available head and flow to produce the average monthly kWh per month as stated in exhibit F-1.

Brent E. Gardner, P.E.

EXHIBIT F-2  
ENGINEER'S CERTIFICATE TO PACIFICORP  
OF  
MOTIVE FORCE PLAN

I, Brent E. Gardner, hereby certify that based on the water use records available to me, that the Glendale Hydroelectric Facility, owned and operated by the Consolidated Irrigation Company, will have the available head and flow to produce the average monthly kWh per month as stated in Exhibit F-1. I further certify that the Facility Capacity Rating of the generator at the anticipated time of Commercial Operation is a maximum of 481 kW and that the Facility is able to generate electric power reliably in amounts required by this Agreement.



Brent E. Gardner, PE

Signed this 24<sup>th</sup> day of August, 2015

**EXHIBIT G**  
**SAMPLE ENERGY PURCHASE PRICE CALCULATIONS**

The following are samples of calculations of energy purchase prices using the formula and tables in Section 5.1.

The calculation for the non-levelized purchase price during an On-Peak Hour in May of 2015 equals: \$59.88/MWh (the 2015 annual rate for Conforming Energy) multiplied by 92% (0.92) (the May On-Peak Hour multiplier), which equals \$55.09/MWh.

**Table 2:** Sample calculations for non-levelized Conforming Energy in 2015 [Purchase Price = annual rate \* monthly on-peak/off-peak multiplier].

<b>Month</b>	<b>Conforming Energy Annual Rate for 2015 (per MWh)</b>	<b>On-Peak Hour Multiplier</b>	<b>Calculated Purchase Price for 2015 On-Peak Conforming Energy (per MWh)</b>	<b>Off-Peak Hour Multiplier</b>	<b>Calculated Purchase Price for 2015 Off-Peak Conforming Energy (per MWh)</b>
January	\$59.88	103%	\$61.68	94%	\$56.29
February	\$59.88	105%	\$62.87	97%	\$58.08
March	\$59.88	95%	\$56.89	80%	\$47.90
April	\$59.88	95%	\$56.89	76%	\$45.51
May	\$59.88	92%	\$55.09	63%	\$37.72
June	\$59.88	94%	\$56.29	65%	\$38.92
July	\$59.88	121%	\$72.45	92%	\$55.09
August	\$59.88	121%	\$72.45	106%	\$63.47
September	\$59.88	109%	\$65.27	99%	\$59.28
October	\$59.88	115%	\$68.86	105%	\$62.87
November	\$59.88	110%	\$65.87	96%	\$57.48
December	\$59.88	129%	\$77.25	120%	\$71.86

<b>PACIFICORP</b> <b>AVOIDED COST RATES FOR NON-SEASONAL HYDRO PROJECTS</b> <b>June 1, 2015</b> <b>\$/MWh</b> <b>New Contracts and Replacement Contracts without Full Capacity Payments</b>								
Eligibility for these rates is limited to projects smaller than 10 aMW.								
LEVELIZED							NON-LEVELIZED	
CONTRACT LENGTH (YEARS)	ON-LINE YEAR						CONTRACT YEAR	NON-LEVELIZED RATES
	2015	2016	2017	2018	2019	2020		
1	59.88	60.96	61.72	63.38	67.47	71.56	2015	59.88
2	60.40	61.33	62.52	65.35	69.44	73.18	2016	60.96
3	60.81	61.96	64.04	67.26	71.13	74.52	2017	61.72
4	61.38	63.18	65.71	68.96	72.55	75.69	2018	63.38
5	62.42	64.61	67.28	70.42	73.78	76.68	2019	67.47
6	63.66	66.02	68.68	71.70	74.83	77.75	2020	71.56
7	64.93	67.31	69.92	72.80	75.92	78.85	2021	74.92
8	66.11	68.48	71.01	73.90	77.02	79.80	2022	77.54
9	67.21	69.52	72.10	75.00	77.98	80.58	2023	79.77
10	68.19	70.56	73.17	75.96	78.77	81.28	2024	81.49
11	69.18	71.59	74.12	76.78	79.49	81.94	2025	84.53
12	70.15	72.50	74.93	77.51	80.16	82.61	2026	87.61
13	71.03	73.30	75.66	78.20	80.84	83.31	2027	88.96
14	71.79	74.01	76.35	78.88	81.54	84.01	2028	89.52
15	72.48	74.69	77.03	79.57	82.22	84.71	2029	90.61
16	73.14	75.35	77.71	80.25	82.91	85.44	2030	92.27
17	73.78	76.01	78.37	80.93	83.62	86.19	2031	94.77
18	74.42	76.66	79.03	81.62	84.35	86.91	2032	97.62
19	75.04	77.29	79.71	82.33	85.04	87.66	2033	100.15
20	75.65	77.94	80.39	83.00	85.76	88.45	2034	103.05
							2035	106.89
							2036	110.66
							2037	113.06
							2038	117.86
							2039	123.54
							2040	129.50

Note. The rates shown in this table have been computed using the U.S. Energy Information Administration (EIA)'s Annual Energy Outlook 2015, released April 14, 2015. See Annual Energy Outlook 2015, Table 3.8 Energy Prices by Sector-Mountain at [http://www.eia.gov/forecasts/aao/tables\\_ref.cfm#supplement/](http://www.eia.gov/forecasts/aao/tables_ref.cfm#supplement/)



**EXHIBIT H**  
**SAMPLE CONFORMING ENERGY CALCULATIONS**

The following are sample calculations for determining On-Peak and Off-Peak Conforming Energy and Non-Conforming Energy for purposes of the payment formulae in Section 5.2 for a given month. These examples assume that the Net Energy is delivered after the Commercial Operation Date and that no Inadvertent Energy is delivered.

**Step 1:** Determine the 90%/110% performance target.

$SMED-90 \text{ (kWh)} = 90\% * SMED \text{ (kWh)}$  (SMED is the Scheduled Monthly Energy Delivery after any adjustments pursuant to Section 4.4.)

$SMED-110 \text{ (kWh)} = 110\% * SMED \text{ (kWh)}$

**Step 2:** Determine which portion of Net Energy for the month is Conforming Energy and which is Non-Conforming Energy in relation to the 90%/110% performance targets.

If total Net Energy < *SMED-90*, all Net Energy is Non-Conforming Energy

If total Net Energy >= *SMED-90* and <= *SMED-110*, all Net Energy is Conforming Energy

If total Net Energy > *SMED-110*,

(a) Determine the point in time during the month at which Net Energy reached *SMED-110 (Time-110)*;

(b) All Net Energy delivered before *Time-110* is Conforming Energy;

(c) All Net Energy delivered after *Time-110* is Non-Conforming Energy.

**Step 3:** Determine the On-Peak and Off-Peak amounts for the Conforming Energy and Non-Conforming Energy values by whether the meter reading indicates that the energy was delivered during On-Peak or Off-Peak Hours. These amounts are the CEnergy<sub>On-Peak</sub>, CEnergy<sub>Off-Peak</sub>, NCEnergy<sub>On-Peak</sub>, and NCEnergy<sub>Off-Peak</sub> values for the formulae in Section 5.2.

**Example Month:** The following is an example calculation for a month given the following values:

SMED = 200,000 kWh

Net Energy = 250,000 kWh

**Example Step 1:** Determine the 90%/110% performance target.

$SMED-90 \text{ (kWh)} = 90\% * 200,000 \text{ kWh (SMED)} = 180,000 \text{ kWh}$

$SMED-110 \text{ (kWh)} = 110\% * 200,000 \text{ kWh (SMED)} = 220,000 \text{ kWh}$

Example Step 2: Determine which Net Energy is Conforming Energy and which is Non-Conforming Energy in relation to the 90%/110% performance targets.

Because 250,000 kW (Net Energy) > 220,000 kWh (*SMED-110*),

- (a) Assume that the meter shows that accumulated Net Energy for the month reached 220,000 kWh (*SMED-110*) at 1 p.m. on the 25th (*Time-110*);
- (b) All Net Energy delivered before 1 p.m. on the 25th (*Time-110*) is Conforming Energy;
- (c) All Net Energy delivered after 1 p.m. on the 25th (*Time-110*) is Non-Conforming Energy

Example Step 3: Determine the On-Peak and Off-Peak amounts for the Conforming Energy and Non-Conforming Energy values by whether the meter reading indicates that the energy was delivered during On-Peak or Off-Peak Hours. For this example, actual meter readings for On-Peak and Off-Peak Hours are made up. (Note: where Net Energy > *SMED-110*,  $CEnergy_{On-Peak} + CEnergy_{Off-Peak} = SMED-110$ .)

On-Peak Conforming Energy (kWh) = metered Net Energy delivered before *Time-110*  
during On-Peak Hours = 150,000 kWh =  $CEnergy_{On-Peak}$

Off-Peak Conforming Energy (kWh) = metered Net Energy delivered before *Time-110*  
during Off-Peak Hours = 70,000 kWh =  $CEnergy_{Off-Peak}$

On-Peak Non-Conforming Energy (kWh) = metered Net Energy delivered after *Time-110*  
during On-Peak Hours = 20,000 kWh =  $NCEnergy_{On-Peak}$

Off-Peak Non-Conforming Energy (kWh) = metered Net Energy delivered after *Time-110*  
during Off-Peak Hours = 10,000 kWh =  $NCEnergy_{Off-Peak}$

**EXHIBIT I**

**Seller Authorization to Release Generation Data to PacifiCorp**

**CONSOLIDATED IRRIGATION COMPANY**

**P.O. Box 311  
Preston, Idaho 83263**

19 May 2015

Brian Jensen, *President*, (208) 339-0516  
Ray Bennett, *Vice President*, (208) 540-2156  
Maxine Waddoups, *Secretary*, (208) 852-2364  
Thane Winward, *Treasurer*, (208) 852-1120  
Lyle Porter, *Manager*, (208) 339-1864

Jay Ransbottom, *Director*, (208) 852-2863  
Kent Egley, *Director*, (208) 852-2997  
Larry Johnson, *Director*, (208) 380-9738  
Lyle Porter, *Director*, (208) 339-1864  
Carl Swainston, *Director*, (208) 221-5698

Transmission Services  
Attn: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

**RE: Consolidated Irrigation Company Interconnection Request**

Dear Sir:

Consolidated Irrigation Company hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Consolidated Irrigation Company's generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. Consolidated Irrigation Company acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

  
Name

Pres CIC  
Title

5-18-15  
Date



## Franklin County Commissioners

39 West Oneida, Preston, Idaho 83263  
(208) 852-1090 • Fax (208) 852-1094

March 9, 2015

To Whom It May Concern,

Franklin County Commissioners are in support of the Hydro Project of Consolidated Irrigation Company.

If you have any questions or concerns, please feel free to contact us.

Franklin Co Commissioners

Handwritten signature of R. Dirk Bowles in black ink.

R Dirk Bowles

Handwritten signature of Scott R Workman in black ink.

Scott R Workman

Handwritten signature of Boyd Burbank in black ink.

Boyd Burbank

Attest:

Handwritten signature of Shauna T Geddes in black ink.

Shauna T Geddes, Clerk

**BOYD BURBANK, Dist. #1**  
1448 E. Cub River Road  
PRESTON, IDAHO 83263  
(208) 244-0639  
Email: boyd@plmw.com

**R. SCOTT WORKMAN, Dist. #2**  
1448 E. 7400 N.  
PRESTON, IDAHO 83263  
(208) 852-3086, Cell (208) 339-3085  
Email: sworkman@digis.net

**R. DIRK BOWLES, Dist. #3**  
1452 W. 5600 S.  
PRESTON, IDAHO 83263  
(208) 852-3724, Cell (208) 221-1398  
Email: dpbowles@plmw.com